

A

REVIEW

OF THE

STATE

OF THE

BRITISH NATION.

Thursday, May 26. 1709.

I Am casting up the Advantages and Disadvantages of the Treason-Bill on the Side of *Scotland*, and this I do, because however some that with *Scotland* well, may think it injurious to them; I must own, I think it otherwise— If it were really to their Disadvantage, I am sure, I would be the first that should complain; but, while I do not see it, I must be allow'd to search after it, and I know no better Method than by impartially stating the Particulars.

I have examin'd the first Head, viz. The Attainder of Blood, and extending the Forfeitures of Treason to the Posterity of the Traytors; I have shewn the Reasons, why we made that Law in *England*, and

the Usefulness of it, to deter from Treason those that have any Regard to that most material Article, *Of Wife and Children*; yet after all I have said, I am willing for helping forward the Account we are upon, that this be plac'd among some of the Disadvantages, and so they stand to the Credit-Side of *Scotland*, in an Account of Loss and Gain by the Treason-Bill, as you shall see sum'd up, when I draw the Ballance of this new-fashion'd Account.

But before I part with this Article, I am to note—There are some People in *Scotland*; who apprehend, and are mighty uneasy about it, that this Bill should revive an old Law which was once in Use in *Scotland*, and which was rescind'd by the Revolution &
Plz.

Viz. That when a Superior or Laird in *Scotland* forfeited his Estate for Treason, all his Feudatories or Vassals forfeited with him.

This was their Law even to the Revolution; as if when the Lord of a Mannor in *England* should forfeit his Estate, all the Tenants of the Mannor should lose their Copyholds—— But I hope, there shall nothing so barbarous ever appear again in *Britain*, whether *South* or *North*, nor is there the least Shadow of any thing like it in this Law.

The next Disadvantage I hear complain'd of is, The denying the Prisoner, the List of the Names of the Witnesses against him.——And this seems very plausible at the first View of it, but in the farther Examination of it, I believe will have another Aspect.

It is true, a Man ought to know his Accusers, and upon all our Trials they are always made publick twice at least; once before the Grand Jury, where the Witnesses only are heard, and the Jury are Judges, whether there be sufficient Evidence to put the Person accused in Danger of his Life or no; and once upon the Trial of the Person, when both the Witnesses are heard on one hand, and the Criminal or Person charg'd on the other, in his own Defence.

Now it is very seldom, but a Man, that is charg'd with Treason, knows who can or cannot prove it upon him—— Nor is a Man brought upon Trial in *England*, but generally speaking he knows his Accusers, or may do so at least, tho' judicially speaking he does not, that is, the Court is not bound to give in their Names, and that *exclusively*, so, that no other Witn's can be made use of, but such as whose Names are given in—— A Method, which had it been practis'd in *England*, many a guilty Person would have escap'd, and many an innocent Man have suffer'd. To examine this Practice a little.

The Thing argued for is, *That the Prisoner shall have the Names of his Accusers, that is of the Witnesses against him, given to him before Trial, and that no Witnesses shall be made use of, but such whose Names the Prisoner has an Account of before.*

I shall not insist upon the Advantage given the Prisoner by this, to find out, come at, and tamper with the Witness,

corrupting whom, has not always been found, an impracticable Thing on *this Side Britain*, nor would not long be so, I suppose, on the other. But I must say, there seems to be no other Uses made of this List of Witnesses to the Prisoner, but his defaming them or corrupting them; the first he is allow'd to do, the next he ought not to be allow'd to do; the first we seldom find a Prisoner wanting in, tho' he has not a formal List of Names given him.

Confronting, invalidating the Credit of, and defaming the Witness, therefore seems to be the only Use the Prisoner can make of this Clause—— And in *England* we never find him disabled in it, tho' He have not their Names formally given him, since it is most easie to learn from the Grand Jury the Names of the Evidence; so that this seems but a trifling Advantage to the Prisoner.

Let us examine then the Disadvantages, which this Method may occasion to National Justice; and first I say, many a guilty Person may escape—— I can offer you an Instance within my own Knowledge, when a Wretch, Servant to my Lord H——m, was try'd at the *Old-Baily* for Murther; the Evidence was heard, the Man charg'd—— He had confess'd, he had murther'd his Wife—— A Body was found murther'd, and the Body had been irregularly remov'd—— But very unhappily there was no Witness to prove, the Body, that the Coroners Inquest had given their Verdict upon, was the Body of his Wife, or the same Body he had murther'd—— Upon this the Trial was at a full Stop, and had the Man been sharp to take hold of the Advantage, he might have got off; at last a Lady in the Gallery call'd out, and nam'd a Person who should be sent for, that could supply that Part of the Evidence, upon which the Criminal was set by till the Person was sent for, who was it seems sick in Bed, but was produc'd, and the Man was condemn'd—— Now, had the Names of the Witnesses been given in to the Criminal *peremptorily*, and no Evidence been allow'd, but such whose Names were thus given in, the Murtherer had most certainly escap'd; and many such Instances may be had every Day.

Another

Another Example I can give, wherein, without such an Addition, an Innocent might have suffer'd. Two Gentlemen fall out in the Streets of *London*, or in a *Coffee-House*, and at the Door they draw, fight, and one is kill'd; *I must be excus'd Names*, because the Case is new and known, and it would be too much *renovare Dolorẽm* to some honest Families to bring Names again upon the Stage—— The surviving Gentleman had the Misfortune to have violent Prejudices run against him in the Trial, and some vehement Prosecutors, in order to take his Life upon the Account of Murther. The Evidence prepar'd, prov'd he kill'd him, so the Fact was clear; but to make the Matter farther out, and prove the premeditated Malice, they labour'd for more Witnesses: and after all, another Evidence is produc'd——Which it seems saw the Fact; this Person they depended very much upon, and brought in at last; but this very Evidence clear'd the Person accus'd, contrary to their Expectation, and against the real Design, by proving he did not draw, till the dead Person had made several Passes at him, *and like a Coward*, says the Witness, he run back as far as ever he could—— The Witness indeed thought she did her best to hang the Gentleman, but effectually clear'd him—— Now, had he insisted upon it, that no more Witnesses should have been produc'd, it had been against his own Life.

But to enlarge on this a little; should we admit no more Witnesses, than we can give in the Names of before Trial, almost no Criminal in *England* would be found guilty—— And tho' many Cases could be stated to illustrate this, I shall name but one; The Witnesses proving a Fact, are known and heard; to invalidate this or that Fact, the Criminal brings Witnesses to prove he was out of the Country, or sick in Bed at the time, or the like, so that it is impossible to be true; the Pursuer surpriz'd with this Proof, knows not what to say—— There starts up a Person perfectly unforeseen, and offers to prove, that the Criminal has suborn'd those Men to give this false Testimony, and given them so much Money for it; or another offers to prove he was

in *England*, and in Health at the Time, or the like; but this or these Witnesses not being known of before, and their Names not given in, as by the Law is requir'd, they cannot be heard, and the Traytor is acquitted.

Innumerable Circumstances, like these, happen daily in our Trials in *England*, in Cases of Murther and Treason, and will no doubt do the like in *Scotland*; for preventing which this Law is made, by which we think it will be more difficult for an innocent Man to suffer, or a guilty Man to escape, than it is now—— And with Submission to all Opposers, who may be well inclin'd to publick Justice, the true End of the Law being the Punishment of, and deterring from Crime, and the Defence and Protection of Innocence, that Law must be best in its own Nature, which is most fitted and best qualify'd to detect the Criminal, and protect the Innocent; and in this Case, let the Disadvantages be what they will to the Guilty, I believe, it is easie to make it appear, that the Law as now Establish'd, is much better qualify'd for these two great Ends of Law, than the Laws of *Scotland* were before.

Again, it is observable, that even these Clauses *forfeiting for Posterity, and of denying the Names of the Witnesses and of the Fury to the Prisoner*, upon which we have been saying so much, is only continued till the Death of the Pretender, and three Years after the Protestant Succession takes Place; this first is a justifying what I argued in the Beginning of this Paper—— That more Severity is due, while there are SUCH Struggles against SUCH a Government as this, than even the same Government would practise, when such Dangers are over; and no Man can reasonably think any Severities too great to discourage the Invasions of an Enemy, we have so much Reason to keep down. *But of this hereafter.*

There are are in *Scotland*, yet living, a great many honest innocent Gentlemen, who in our late Times had the Disaster to fall into the Hands of Tyranny, and to pass the Severities of the Laws of *Scotland*, take them with all the Advantages that *new* is pleaded

pleaded in their Behalf—— And tho' these might all have the Formalities of the Law made use of in their Behalf, I would gladly appeal to them in this Case—— What would they have given? Nay, what would they not have given to have been try'd in *England*, and been try'd by the Laws of *England*? And yet even the Laws of *England* were not then without their particular Severities, which were hard enough upon the Criminal, and which are since taken away.

But if these Gentlemen testify for my Argument, as I am perswaded they will, it will remain a great Difficulty to prove at the same time, that the Laws of *England* in Cases of Treason are severer than the Laws of *Scotland*.

The Sum of the Matter lies here; there are Advantages in *Scotland* to the Criminal, which there are not in *England*; and there are Advantages in *England*, which there are not in *Scotland*; and we shall see, if upon the Balance the Advantages in *England* are not the greatest; whether an innocent Man is not rendered more safe, and Conviction of a Criminal more sure by the *English* Laws; if so, then are the *Scots* really Gainers, and not injur'd by the Alteration; and this is the Subject of my Enquiry.

I hope, all impartial thinking Persons will be convinc'd, that where examining into the Truth of Fact, in any Case where the two Nations are concern'd, and where Interests seem to clash, is the best Way to keep the general Calm between us, which all good Men hope for from the Union—— Honest Men are always content to hear every thing impartially examin'd, and will be assistant to the Discovery of Truth, because as Peace is every honest *Britain's* Design, so to search out Truth is the direst Method in the World to come at Peace.

I shall close this Enquiry in my next.

ADVERTISEMENT S.

Just Publish'd,

Cusus Equestris Nottinghamiensis. Carmen Hexametrum, Autore RICHARDO JOHNSON, Ludj Literarij ibidem Magistro, Commentariorum Grammaticorum Scriptoris. Sold by John Morphew near Stationers-Hall. Price 6 Pence.

Just publish'd,

THE SCOTS NARRATIVE Examind; Or, the Case of the Episcopal Dissenters in *Scotland* stated, and the late Treatment of them in the City of *Edinburgh* enquir'd into: With a brief Examination into the Reasonableness of the grievous Complaint of Persecution in *Scotland*, and a Defence of the Magistrates of *Edinburgh*, in their Proceedings there: Being some Remarks on a late Pamphlet, Entitled, *A Narrative of the late Treatment of the Episcopal Ministers within the City of Edinburgh, &c.* Sold by A. Baldwin in *Warwick-Lane*.

Just publish'd,

Quackery Unmask'd: Or, Reflections on the sixth Edition of Mr. Martin's Treatise of the Venereal Disease, and its Appendix; and the Pamphlet call'd, *The Charitable Surgeon, &c.* Containing a full and plain Detection and Refutation of some gross Errors, &c. of those Authors: Interspers'd with many new and useful Observations concerning the Venereal Disease; and the Method and Medicines proper for its speedy, safe and effectual Cure. Proper Remarks on Mr. Martin's Admirable Medicine, and his infallible Preservative. A full and true Account of Quacks, and their Method of Practice. An Account of some excellent Medicines, &c. Highly necessary to be read by all Venereal Patients, who would prevent their own Ruin, and by all Physicians, Surgeons, and Apothecaries, who are here vindicated from Mr. Martin's Aspersions. By F. SPINKE, Licens'd Practitioner in Physick and Surgery. London Printed and Sold by D. Brown, without Temple-Bar; G. Strahan, at the Golden-Ball in Cornhill; F. Woodward in St. Christopher's Church Yard in Threadneedle-Street; B. Barker at the White-Hart in Westminster-Hall; and the author at his House, at the Golden-Ball, between the Sun and Castle Taverns in Honey-Lane-Market, Cheapside. (Price 1 s.) 1709.